IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5310 OF 2005

Laxman Appa Deshmane ... Petitioner

V/s

Muzaffarhussain Hatimalli Bohari ... Respondent

Mr. R.V. More for the petitioner.

Mr. G.S. Godbole for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 1ST MARCH, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petitioner tenant has filed the petition against the judgment and order passed by the Addl. District Judge, Pandharpur, dated 20.4.2005 allowing the appeal and setting aside the judgment and order passed by the Trial Court and decreeing the suit with direction to the respondent to deliver vacant possession of the suit premises to the present respondent.

3. The plaintiff/respondent filed the suit under the provisions of Bombay Rent Act for recovery of possession of the suit premises and arrears of rent. The grounds mentioned were that the respondent was rendered defaulter as he was in arrears of rent and taxes and also that the plaintiff/respondent required the suit premises reasonably and bonafide for own personal use and occupation and, therefore, the suit came to be filed through the Power of Attorney as the plaintiff/respondent himself is residing at Burhanpur.

4. The defendant contested the suit inter-alia submitting that the allegations made by the plaintiff/respondent were false and, therefore, should not be taken into account and sought dismissal of the suit.

5. The learned Trial Court adjudicated the dispute on merits and came to the conclusion that the plaintiff has not proved any of the ground taken up against the defendand and dismissed the suit.

The appeal was carried to the Court of Addl. District Judge at Pandharpur, who, after hearing both parties,

was of the view that plaintiff had succeeded in proving that the defendant was in arrears of rent and taxes and, as such, he was wilful defaulter. It was further held that the plaintiff had proved that the suit premises was required for personal use and occupation. Consequently, the issue of greater hardship was also went in favour of the plaintiff and, as such, the suit for possession of the premises came to be decreed. Hence the present petition.

6. At the outset, it may be noted that it is the case of the defendant that the monthly agreed rent between the parties was Rs.15/- per month and there was an agreement between the parties under which the plaintiff had borrowed an amount of Rs.1500/- from the father of the plaintiff and it was agreed that the amount of rent due and payable to the landlord should be adjusted from the said amount. However, after the agreement, the plaintiff's father filed R.C.Suit No. 206 of 1967 for recovery of the said amount. The said suit was compromised in view of the said compromise decree in which it was decided that the amount of Rs. 1500/- shall be payable in equal yearly instalments of Rs.300/-, which amount, according to the present petitioner, still is to be paid and due payable from the

landlord and on that count it is submitted that the petitioner is not wilful defaulter in law as contemplated under Sec.62 of the Contract Act. However, in this regard, it must be noted that the compromise decree was conspicuously silent regarding the earlier agreement and, therefore, in my considered view, the lower appellate Court was right in holding that in absence of terms incorporating the earlier agreement in compromise decree, it cannot be said that the agreement between the parties still prevailed as a result of which the tenant could be said to be not defaulter in law. In any case, I have no doubt whatsoever that the lower appellate Court has properly appreciated the legal aspects of the matter holding that the tenant is rendered wilful defaulter in law in payment of arrears of rent. It is also to be noted that the tenant has not paid the amount of permitted increases and, as such, the lower appellate Court has rightly held him wilful defaulter.

7. Similar is the case with regard to the ground of bonafide requirement of the landlord of the suit premises for his personal use and occupation. It was sought to be submitted on behalf of the petitioner that the plaintiff did not enter into the witness box but his

Power of Attorney has given evidence on his behalf and such evidence of Power of Attorney should not be taken into account. However, on perusal of the deposition of the said witness on behalf of the plaintiff, it is obvious that he is nephew of the plaintiff and has personal knowledge of the relevant facts. Under the circumstances, the finding recorded by the lower appellate Court holding that the suit premises is required bonafide and reasonably for personal use and occupation for the plaintiff, appears to be proper and lawful. Consequent finding to the effect that greater hardship would be caused to the plaintiff if the decree is refused to be passed, is also seen to be properly adjudicated by the lower appellate Court.

8. In short, I am satisfied that the evidence on record is properly appreciated by the lower appellate Court and, therefore, it would brook no interference.

In the result, the petition stands dismissed with no order as to costs.

9. At this stage, the learned counsel for the petitioner submitted that some time should be granted to the petitioner to vacate the suit premises. In view of

the facts and circumstances, the decree shall not be executed for the period of one year from the date of this order on conditions as under :-

(i) That the petitioner shall not create any third party interest in the suit premises.

(ii) All adult members of the family of the petitioner shall execute the undertaking in this manner.

(iii) The petitioner shall continue to pay the agreed rent to the respondent during the period of his occupation.

(iv) The undertaking to be furnished within four weeks from the date of this order, in this Court.

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